

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

**State of Washington
GROWTH MANAGEMENT HEARINGS BOARD
FOR EASTERN WASHINGTON**

JAMES A. WHITAKER,

Petitioner,

v.

GRANT COUNTY,

Respondent.

Case No. 99-1-0019

SECOND ORDER ON COMPLIANCE

This Matter comes before the Board upon a compliance hearing held pursuant to the Final Decision and Order in this case, (May 19, 2000) and Order on Reconsideration & Amendment of Order on Compliance, (June 2, 2004). The compliance hearing was held on March 24, 2004 in Ephrata, Washington. James Whitaker, pro se, represented the Petitioner. Attorneys Stanley M. Schwartz and Stacy A. Bjordahl represented the County.

I. SUMMARY OF DECISION

Grant County originally proposed 72 Limited Areas of More Intense Rural Development (LAMIRDs). The Board approved 27 of these. The Final Decision and Order and Compliance Orders found Grant County out of compliance with the Growth Management Act (GMA) with respect to the eighteen LAMIRDs discussed herein. The Board found in its orders that it was unable to make a final determination of compliance or non-compliance until these remaining individual LAMIRDs were listed as Type I, II or III under the GMA. (RCW 36.70A.070(5)(d)).

In response, the County reviewed these LAMIRDs and placed them in one of the three types of LAMIRDs. The Board has reviewed each of these LAMIRDs and their zoning designations and find that some are in compliance with the GMA and others fail to comply.

1 **II. BACKGROUND**

2 On December 3, 1999, James A. Whitaker filed a Petition for Review.

3 A hearing on the merits was held on April 27, 2000. A Final Decision and Order was
4 entered on May 19, 2000.

5 On November 15, 2001 the Superior Court of Washington for Thurston County
6 entered its Findings of Fact, Conclusions of Law, and Order on Administrative Procedure Act
7 Appeal, remanding this matter for the admission of supplemental evidence, to wit, the
8 1997-1999 building permit information before this Board.

9 On February 6, 2004, the Board received Respondent's Motion for a Compliance
10 Hearing.

11 On March 24, 2004, the Board held a compliance hearing. Present were Dennis
12 Dellwo, Presiding Officer, and Board Members Judy Wall and D.E. "Skip" Chilberg. Present
13 for Petitioner was James Whitaker. Present for Respondent were Stephen J. Hallstrom,
14 Stanley Schwartz and Stacy A. Bjordahl.

15 May 6, 2004, an Order on Compliance was entered, finding the County to be in
16 continued non-compliance on most of the LAMIRDs and in compliance on others.

17 On May 18, 2004, Respondent Grant County sought reconsideration of the Board's
18 May 6, 2004, Order on Compliance.

19 On June 1, 2004, an order was entered amending the original Order on Compliance.

20 On August 5, 2004, Grant County requested the Board review the designations of
21 LAMIRDs under RCW 36.70A.070(5)(d).

22 The compliance hearing was held on March 24, 2004 in Ephrata, Washington, James
23 Whitaker, pro se, represented the Petitioner. Attorneys Stanley M. Schwartz and Stacy A.
24 Bjordahl represented the Respondent.

25 On May 6, 2004, the Order on Compliance was entered.

26 On May 18, 2004, Respondent Grant County sought reconsideration of the Board's
May 6, 2004 Order on Compliance.

June 2, 2004, an Order Amending the Order on Compliance was entered.

1 On September 1, 2004, a hearing was held to determine the compliance of 18 of the
2 LAMIRDs found out of compliance.

3 The Respondent, Grant County, sought additional time for the submission of a Post
4 Hearing Summary of LAMIRDs. The Board received this additional material from the County,
5 September 30, 2004.

6 **III. BURDEN OF PROOF**

7 Unless there has been a prior determination of invalidity, comprehensive plans,
8 development regulations and amendments to them are presumed valid upon adoption.
9 RCW 36.70A.320(1). The burden is on the Petitioner to demonstrate that any action taken
10 by the County is not in compliance with the requirements of Ch. 36.70A RCW. (RCW
11 36.70A.320(2)). The Board shall find compliance unless it determines that the actions taken
12 are clearly erroneous based upon the record before the board and in light of the goals and
13 requirements of the Growth Management Act. (RCW 36.70A.320(3)).

14 This burden remains the same for compliance hearings. The burden shifts only if
15 there has been a finding of invalidity. No such finding has been found in this matter.

16 **IV. ISSUES PRESENTED**

- 17 • **Did the County fail to comply with the limited areas of more**
18 **intensive rural development (LAMIRD) requirements of RCW**
36.70A.070(5), when it adopted the Ordinance No. 04-007 – CC as
amended?

19 The 1995 amendments to RCW 36.70A.070 created provisions for “limited areas of
20 more intense rural development”, generally referred to as “LAMIRDs”. LAMIRDs are
21 permitted to be designated in rural lands where the county has adopted measures to
22 “minimize and contain the existing areas or uses” of LAMIRDs. RCW 36.70A.070(5)(d).
23 The statute provides for three types of LAMIRDs, each with different characteristics and
24 different limitations.

25 To qualify as a Type I LAMIRD, the LAMIRDs must consist of certain “existing areas”
26 defined in RCW 36.70A. 070(5)(d)(v). The allowed uses and areas include commercial,

1 industrial, residential or mixed-use areas "whether characterized as shoreline development,
2 villages, hamlets, rural activity centers, or crossroads developments." An "industrial area" is
3 not required to be principally designed to serve the "existing and projected rural
4 population." Thus, all other Type I LAMIRDS (commercial, residential, or mixed-use) must
5 be principally designed to serve the "existing and projected rural population." In designating
6 and establishing LAMIRDS under Type I, a county must "minimize and contain" ((d)(iv)) the
7 existing area or existing use. A prohibition against including lands within the logical outer
8 boundaries (LOB) that allows a "new pattern of low-density sprawl" for the existing area or
9 existing use must be adopted ((d)(iv)). Type I LAMIRDS, being neither rural nor urban,
10 allowing existing areas or existing uses, must always be "limited" i.e., minimized and
11 contained.

12 In establishing the LOB for an "existing area" (but not for existing uses) under RCW
13 36.70A.070(5)(d)(iv), a county is required to "clearly" identify and contain the LOB. That
14 identification and containment must be "delineated predominately by the built
15 environment," but may include "limited" undeveloped lands. We agree with the Western
16 Growth Board and conclude that legislative intent, as determined from reading all parts of
17 the GMA with particular emphasis on (5)(d), means the "built environment" only includes
18 those facilities, which are "manmade," whether they are above or below ground. To comply
19 with the restrictions found in (d), particularly (d)(v), the area included within the LOB must
20 have manmade structures in place (built) on July 1, 1991. (*City of Anacortes v. Skagit*
21 *County*, Compliance Order, WWGMHB No. 00-2-0049c, FDO, February 6, 2001.)

22 To qualify as a Type II LAMIRD, they must meet the criteria of [RCW 36.70A.070
23 (5)(d)(ii)]. This chapter authorizes small-scale recreation or small-scale tourist LAMIRDS.
24 Commercial facilities to serve those LAMIRDS are allowed. The intensification or creation of
25 small-scale recreational or small-scale tourist uses must rely on a rural location and
26 setting. Such LAMIRDS cannot include new residential development. The uses need not be
principally designed to serve the "existing and projected rural population." "Public services
and public facilities" must be limited to those "necessary to serve" only the LAMIRD. Such

1 public services and public facilities must be provided "in a manner that does not permit low-
2 density sprawl."

3 To qualify as a Type III LAMIRD, they must meet the criteria of RCW
4 36.70A.070(5)(d)(iii):

5 The intensification of development on lots containing isolated nonresidential
6 uses or new development of isolated cottage industries and isolated small-
7 scale businesses that are not principally designed to serve the existing and
8 projected rural population and nonresidential uses, but do provide job
9 opportunities for rural residents. Rural counties may allow the expansion of
10 small-scale businesses as long as those small-scale businesses conform with
11 the rural character of the area as defined by the local government according
12 to RCW 36.70A.030(14). Public services and public facilities shall be limited to
13 those necessary to serve the isolated nonresidential use and shall be provided
14 in a manner that does not permit low-density sprawl.

15 Type III LAMIRDs do allow new development on "lots" rather than requiring the
16 County to determine Logical Outer Boundaries for the LAMIRD as is provided for Type I
17 LAMIRDs based on the pre-existing built environment as of July 1990. (RCW
18 36.70A.070(5)(d)(iv); *Durland v. San Juan County*, WWGMHB Case No. 00-2-0062c (Final
19 Decision and Order, May 7, 2001)). However, the Type III LAMIRD must meet the
20 requirements of RCW 36.70A.070(5)(d)(iii) and is not merely the same thing as a Type I
21 LAMIRD without the requirement of a logical outer boundary established in accordance with
22 the built environment as of July 1990. (Grant County is required to use July 1991, the year
23 Grant County chose to plan under the Growth Management Act.)

24 The Board must first determine whether the LAMIRD appropriately contains
25 "isolated" cottage industry and small-scale businesses. This phrase does not require that
26 the cottage industry and small-scale business to be located in an isolated part of the
27 county. It is however required that the cottage industry and small-scale business itself be
28 isolated from other similar uses. The location adjacent to other LAMIRDs or allowing similar
29 uses within it causes a LAMARD to not meet the requirement for "isolated" uses.

1 Our sister Board (The Three Sisters) recently addressed this issue. We quote their
2 Order extensively with approval:

3 Here, the statute refers to "lots containing isolated nonresidential uses or new
4 development of isolated cottage industries and isolated small-scale
5 businesses". First we observe that the term "isolated" is used repeatedly to
6 modify the type of use allowed in the type (d)(iii) LAMIRD. The terms "cottage
7 industries" and "small-scale businesses" are both modified by the term
8 "isolated". There is no ambiguity about the application of the term "isolated"
9 to both types of uses.

10 Second, we note that the term "isolated" is *not* used to modify "lots". The lots
11 described in the statute contain isolated uses but the lots themselves are not
12 defined as "isolated". We therefore conclude that the statute is referring to
13 isolated uses rather than to isolated lots. If it were sufficient for the location
14 to be isolated or remote as the County argues, then the term "isolated" would
15 have been applied to "lots" rather than (or in addition) to "cottage industries"
16 and "small-scale businesses".

17 Our inquiry does not end there, however. We must still decide what it means
18 for the uses to be isolated. Participant argues that the term "isolated" must
19 "at least include the notion that the new (d)iii LAMIRD is discontinuous from
20 other commercial development". Ex. 13-50 (Comment letter of Nancy
21 Dorgan).

22 The dictionary indicates that the derivation of the word "isolate" comes from the
23 Latin "insula" meaning "island." "Isolate" is defined as "to set apart from others;
24 place alone." Webster's New World Dictionary of the American Language, College
25 Edition. An isolated use, then, must be one that is set apart from others. The
26 Legislature's use of the term "isolated" for both cottage industry and small-scale
businesses demonstrates an unambiguous intention to ensure that any commercial
uses established by the mechanism of a type (d)(iii) LAMIRD be set apart from other
such uses. ***Better Brinnon Coalition v. Jefferson***, WWGMHB 03-2-0007
Compliance Order (June 23, 2004).

It is also important that rural development be contained and inappropriate
conversion of undeveloped land into sprawling, low-density development is reduced in the
rural areas. RCW 36.70A.070(5)(c)(i) and (iii). Side-by-side LAMIRDs can hardly be said to
contain and reduce sprawl and limit growth.

1 The Board also recalls its decision in *City of Walla Walla, et al v. Walla Walla*
2 *County*, Case No. 02-1-0012c, (Final Decision and Order, November 26, 2002) and the
3 Central Puget Sound Growth Management Hearings Board's holding that LAMIRDs must not
4 be in too close proximity to UGA boundaries. Such location would promote the low-density
5 sprawl that the LAMIRDs are required to avoid. *City of Tacoma, et al., v. Pierce County*,
6 CPSGMHB Case No. 99-3-0023c (Final Decision and Order, June 26, 2000).

7 The desire of Grant County to develop jobs in the region is certainly understandable
8 and the Board agrees that the GMA includes a goal to encourage economic development.
9 RCW 36.70A.020(5). However, economic development may not occur at the expense of
10 creating low-density sprawl. If new Type III LAMIRDs could be created for commercial
11 development abutting other LAMIRDs, it would be possible to create strip malls or other
12 stretches of more intensive rural development throughout the rural areas. This would
13 encourage sprawl in the rural areas rather than containing limited amounts of development
14 in the rural zone as envisioned by the Act.

15 While the Board presumes the validity of these County actions, the county must
16 follow the laws articulated in the Growth Management Act. It is also true that, while the
17 development regulations discussed herein were not contested, the Board must determine
18 whether the placement of a Type I, II or III LAMIRD in a certain zoning district or land-use
19 designation complies with the act and limits the LAMIRD as required. A LAMIRD must be in
20 a Rural Activity Centers Zoning District that is appropriate, thereby limiting the size, uses,
21 and types of development.

22 **EXAMINATION OF INDIVIDUAL LAMIRDS**

23 The Board will now look at each of the 18 separate LAMIRDs presented to this Board.

24 **TYPE I LAMIRDS:**

25 The designation of Type I LAMIRDs, as below, requires the County to determine the
26 Logical Outer Boundaries (LOB) (RCW 36.70A.070(5)(d)(iv)). Where a County is required to
designate such a boundary, using specific criteria, the Growth Management Hearings
Boards cannot presume that these boundaries are correct without more than the bare

1 assertion of their validity. The County needs in its record the information used to make such
2 designation. This is the "show your work" requirement found in narrow circumstances such
3 as this, where the local government is required by the GMA to review specific criteria and
4 perform the appropriate analysis of GMA goals and requirements, more than mere
5 consideration of them. (*Berschauer v. Tumwater* 94-2-0002 (FDO 7-27-94)). The County
6 Commissioners are required by law to review such criteria, then make and articulate their
7 decision for their location of the LOB. The Board is then able to review this action and
8 determine if the boundary is appropriate. The Board rarely requires the County to show
9 their work. The designation of Urban Growth Areas is one example; Logical Outer Boundary
10 designation is another.

11 **1. George 7:** George 7 is an 8.07-acre parcel at the intersection of Road Q NW
12 and Road 1 NW. This is to be a Rural General Commercial LAMIRD. (GCC23.04.500). The
13 placement of this LAMIRD in this zoning district does not limit the size or number of
14 businesses or homes located on the parcel or parcels. The County contends the area was
15 developed prior to July 1, 1991, and is contained within its logical boundaries. On that
16 acreage is a Ready mix concrete facility, towing company, shed, rock-crushing equipment,
17 office/Mobil home, and travel trailer used for an office. A review of the record shows that
18 nowhere in the record is there sufficient evidence that this Board can review to determine
19 how the boundaries were arrived at.

20 While the actions of the County are presumed valid, the Board must be able to see
21 the work by the County for their determination of LOBs. The GMA specifically outlines how
22 the logical outer boundaries are to be designated for a Type I. (RCW 36.70A.070(5)(d)(iv)).
23 The contention that the 8.07 acres, as was adopted by the County Commissioners, is within
24 the logical outer boundaries and the growth and the uses will be contained, is not reflected
25 in the record. The maps used do not show more than the area considered and no sign of
26 built up areas. The record shows no more than a change from a Type III to a Type I and
the claim that some structures existed prior to 1991.

1 **2. ROYAL 1:** Royal 1 is also a Rural General Commercial LAMIRD.
2 (GCC23.04.500). The placement of this LAMIRD in this zoning district does not limit the size
3 or number of businesses or homes that may be located there. Royal 1 is just west of the
4 Royal City UGA and south of SR 26. The County contends that most of this LAMIRD was
5 developed prior to July 1, 1991 for agriculture-related commercial uses. The County stated
6 that the boundary was reduced by the BOCC to include only the developed area. This
7 reduction was done for the designation of this LAMIRD as a Type III. When changed to a
8 Type I, the record does not reflect any determination of the LOB.

9 This proposed LAMIRD contains 9.75 acres and is described in the inventory
10 summary of the County as a Commercial Agriculture Operation, developed roads, gravel
11 parking area and an orchard. The Board can find nothing in the record that shows where
12 the built up area is on the parcel and how the boundaries were determined. See George 7
13 for further discussion. The maps used show no more than the area considered, and no sign
14 of buildings. A red flag for the Board is the inclusion of an orchard as part of the built up
15 area. An orchard is evidence of agricultural resource lands and is not a "built up area" for
16 purposes of a Type I.

17 **3. Ephrata 3:** This LAMIRD is a 46.85-acre parcel that has an outdoors storage
18 area, several structures, roads, commercial plumbing and PVC pipe sales, a trucking
19 company, salvage yard, and a rock pile. This has been designated as a Rural Industrial
20 LAMIRD. (GCC 23.04.530 or 540). Here again, the LAMIRD is placed in zoning where there
21 is no limit on the size or number of businesses or buildings on a parcel. The map shows no
22 buildings upon it. It is difficult for the Board to understand how the County reached their
23 decision on the LOB for this LAMIRD.

24 While the actions of the County are presumed to be valid, the Board must be able to
25 see the work performed in the determination of the LOB. This is especially true where the
26 three LAMIRDs above were designated as Type II or III in previous hearings where no LOB
is required to be determined. Now they have been changed to Type I with no showing of
the work done. The Board can find nothing in the record to demonstrate how the County

1 reached the conclusion that such a large parcel is within the logical outer boundaries of the
2 built up areas. This LAMIRD is also adjacent to the city limits of Ephrata and such a location
3 is not deemed acceptable by this and the other Boards.

4 **CONCLUSION:**

5 These three LAMIRDs are found to be in continued non-compliance. The Board needs
6 to see how the LOBs were determined. The County must place these LAMIRDs into the
7 Rural Zoning District where limitations are appropriate for Types I LAMIRDs. Ephrata 3 has
8 the additional problem of being located next to the Ephrata UGA (their city limits.)

8 **TYPE II LAMIRDS**

9 The first 6 of these Type II LAMIRDs have been designated as Rural Freeway
10 Commercial LAMIRDs. (GCC 23.04.520). This zoning has a limitation as to the size and
11 number of businesses located on each parcel. There is, however, no limitation on the
12 number of businesses within a LAMIRD. This becomes a problem when the parcel is large
13 and may be subdivided. Table 3 of Grant County Code, chapter 23.12 places no limit on the
14 density or DUs per acre.

15 **1. BALLARD 1:** This LAMIRD is located at the Interstate 90 intersection with U
16 NE. It is a 53-acre site and appears to contain two parcels currently zoned industrial. The
17 County reports that this acreage is pasture and has a for-sale sign and electrical lines. The
18 parcel was doubled in size to accommodate a wetland area, prevent a parcel from being
19 bisected by the LAMIRD boundary and include commercial advertising. The GMA (RCW
20 36.70A.070(5)(d)(iv)) directs the County to minimize and contain growth. "Small-scale
21 recreation or small-scale tourist" Lamirds are authorized. Because of the size of this LAMIRD
22 the County must clearly limit and contain the development as required by the GMA. Without
23 limits, this LAMIRD cannot comply with the GMA. These parcels are to be "limited" areas of
24 more intensive rural development. The record does not show the amount of buildable
25 acreage that is available nor does it show why a wetland needs to be part of this
26 development. Because there appears to be no limitation on the number of future lots or

1 parcels, this could be divided into numerous lots with a business on each. This has the
2 danger of becoming a strip mall, unless otherwise limited.

3 **2. DODSON ROAD 1:** This LAMIRD is 20.64-acres and consists of two parcels
4 at the intersection of I-90 and Dodson Road. The parcels are partially developed with RV
5 pads and have been served with water, septic system and electrical power since 1974. This
6 LAMIRD, on its face, complies with the requirements of the GMA. The actions of the County
7 are presumed valid and the Petitioner has not carried his burden of proof. The Board can
8 see that this will be limited and contained as is required.

9 **3. MAE VALLEY 4:** Mae Valley 4 is a 7.72-acre parcel at the intersection of
10 Interstate 90 and Road B NE. The actions of the County are presumed valid and the
11 Petitioner has not carried his burden of proof. The Board can find from the record that the
12 size and location will limit sprawl and comply with this type of designation. Mae Valley 5
13 was adjacent to this LAMIRD, but has been eliminated. Had this not been done, this
14 LAMIRD would have been found out of compliance as well due to its location next to
15 another similar LAMIRD.

16 **4. MOSES LAKE 10:** This LAMIRD is a 30.7-acre parcel at the intersection of
17 Interstate 90 and O NE. Moses Lake 10 has the same problem as Ballard 1, above; the site
18 is too large for limited, small scale recreational or tourist uses.

19 **5. GEORGE 2:** George 2 is a 5.58-acre parcel at the intersection of SR 281 and
20 SR 283, west of I-90. The County states that this will be for new development of small-scale
21 recreational or tourist uses, including commercial facilities, to serve those recreational or
22 tourist uses. George 2 is directly adjacent to George 3 and George 1. George 3 has not
23 been found in compliance and is not before us at this time. The freeway is between George
24 1 and 2. The separation by the freeway has the potential of limiting sprawl and will allow
25 the LAMIRDs to be minimized and contained as required by the GMA. (RCW
26 36.70A.070(5)(d)(iv)). If George 3 were before the Board at this time, there would be a
serious question of compliance. Because it is not before the Board at this time, we need not
address this issue.

1 **6. SILICA ROAD:** Silica Road 1 lies at the intersection of I-90, Road U NE, and
2 Silica Road. This is a 116.74-acre LAMIRD that had been increased to this size to avoid
3 bisecting several of the parcels. There are 4 parcels in this LAMIRD. While the County brief
4 states the need for such size was to accommodate a substantial wetland complex and
5 historically developed Interstate Interchange, the record does not reflect this. The
6 "Designated Photographic Inventory of Designated RAID Areas" indicates there is no
7 development on site except for existing power and frontage along paved and dirt roads.
8 The County is presumed to have acted in compliance, yet the Board must have the facts
9 before it to be able to see how they arrived at such a large LAMIRD. This is certainly not a
10 limited area of more intensive rural development. The very size of this LAMIRD makes it
11 impossible to find that it is limited and discourages sprawl. The fact that there is a limit of
12 one business per parcel is consoling, however, these large parcels are able to be subdivided
13 and increase the number of businesses within this LAMIRD. The zoning this site is placed
14 under does not address this and other limiting factors necessary to minimize and contain
growth.

15 **7. ROCKY FORD 1:** This LAMIRD is a 4.99-acre parcel at an intersection of
16 Neppel Road and SR 17 east of Ephrata. This is a Rural General Commercial LAMIRD. (GCC
17 23.04.500). There is no limit with this zoning on size or number of businesses per parcel or
18 LAMIRD. The zoning that this LAMIRD is placed in allows a tremendous variety of
19 businesses to be built or operated thereon. A Type II allows, "intensification of development
20 on lots containing, or new development of, small-scale recreational or tourist uses." (RCW
21 36.70A.070(5)(d)(ii)). Most of the businesses allowed in a Rural General Commercial district
22 are not permitted by statute on a Type II LAMIRD. This area needs to be placed in a district
that appropriately limits the development.

23 There is nothing claimed to be on the property except a real estate advertisement
24 and a fence. This is a small parcel and tourist and recreational businesses can be
25 established there to serve the recreational needs. Any public services must be established
26 to serve only those businesses. No residential development may occur. Until this LAMIRD is

placed in an appropriate district, which would limit its development to that allowed under the GMA and minimizes and contains development, it cannot be found in compliance.

8. JET FARM 1: This LAMIRD is a 12.8-acre parcel east of SR 243. It has over \$200,000 in improvements. This is a Rural General Commercial LAMIRD. (GCC 23.04.500). There is no limit with this zoning on size or number of businesses per parcel or for the LAMIRD as a whole. Because of its proximity to the Columbia River and the work done on the property, the County found that this would be appropriate for small-scale recreational uses or tourist uses. However, this LAMIRD has the same problems as Rocky Ford 1. The designated zoning does not appropriately limit it. (See Rocky Ford 1 above). Until this LAMIRD is placed in a zoning district that limits it to small-scale recreational or tourist uses, it cannot be found in compliance.

9. EPHRATA 2: This 50-acre LAMIRD is located adjacent to the Ephrata UGA south of SR 282. It primarily consists of the Ephrata Raceway Park. The BOCC reduced the LAMIRD by 42 acres so it only includes the raceway park and the land and uses incidental to the raceway park. This LAMIRD is a Rural Recreational Commercial LAMIRD. (GCC 23.04.550). This Chapter limits the number of overnight lodging units. The size of a retail unit is limited and there can be no more than three establishments per Commercial Recreational zoning district. The separation of the raceway from the city might make sense, however, the new development, especially adjacent to the city, should be within the city's UGA rather than a LAMIRD.

TYPE III

The County designates all of the Type III LAMIRDs listed below as Rural Industrial LAMIRDs. (GCC 23.04.530 and .540). There is no limit as to the number and size of buildings or uses. There is also no indication in the briefing or record as to which type of Rural Industrial category they are, heavy or light industry. Type III LAMIRDs are for small-scale businesses and cottage industries. There is a definition of "Cottage Industry" at GCC 23.08.140, but no definition of "Small Scale Businesses." The Rural Industrial zoning allows

1 for a large number of industrial activities and does not limit new residential development or
2 the provision of public services.

3 **1. MAE VALLEY 1, MAE VALLEY 2 and MAE VALLEY 3:** These three
4 LAMIRDS are contiguous parcels along I-90 North Frontage Road between Road D NE and
5 Road E NE. Parcels 1 and 3 were developed in 1990 or earlier and are currently in
6 agricultural-related retail use. Parcel 2 is undeveloped. The total acreage is approximately
7 84-acres. It is difficult to determine if there will be one cottage industry or one or more on
8 each of these three parcels. As can be seen from the legal discussion above, the cottage
9 industry must be isolated. Any LAMIRD with a location adjacent to other LAMIRDS, or
10 allowing similar uses within it, causes a LAMARD to be out of compliance and not meeting
11 the requirement for "isolated" uses. The briefing of the County seems to indicate that each
12 of these LAMIRDS will be developed with an "isolated small-scale business." The placement
13 of LAMIRDS side-by-side and covering more than 80 acres is a ticket for low-density sprawl,
which is not allowed in the rural areas of the County.

14 **2. ROYAL 2:** Royal 2 is 36.66-acres, 14 acres more than recommended by the
15 County Planning Department. Royal 2 is east of the Royal City UGA and south of SR 26.
16 Because of its rural setting and location, the County felt it was suitable for development of a
17 small-scale business or cottage industry. Again, this is extensive acreage, more than would
18 be needed for isolated small-scale businesses or cottage industries. The designated zoning
19 district where this LAMIRD is placed does not regulate the number or size of the businesses
20 or uses nor is there anything substantial to limit, minimize or contain development, other
than that contained in the definition of Cottage Industry.

21 **3. WARDEN 1:** Warden 1 is located south of the Town of Warden and includes
22 one parcel of 50.58-acres and one small interior parcel of 0.99 acres. Both were developed
23 prior to July 1, 1991 and are used for agricultural storage. This is an extremely large parcel
24 for isolated small-scale businesses or cottage industries. The designated zoning of this
25 parcel does not adequately carry out the requirements of this type of LAMIRD. It does not
26 limit this type of development to isolated businesses and contain the development as

1 required, so as to avoid sprawl and to conform to the Rural Character of the County. This
2 parcel is in the center of irrigated Agricultural Resource Lands. This is not what is meant by
3 "more intense rural development".

4 **4. WHEELER 4:** Wheeler 4 surrounds the Wheeler Rural Community and totals
5 15 parcels and 118.04 acres. There is nothing in the record, which speaks of what the
6 ownership is for these 15 parcels. As seen above, such a zoning designation is without
7 limiting regulations. This LAMIRD is out of compliance because of its size and the lack of
8 regulations, which would minimize and contain growth and conform to the rural character of
9 the County. This type of development encourages sprawl and is not in compliance.

10 The Board initially was asked to approve 72 LAMIRDs when this case began. The
11 Board approved almost half of these LAMIRDs and now has had the opportunity to review
12 18 more. More work by the County is needed before many of these can be found in
13 compliance. While the Board presumes that the actions of the County are valid, the Board
14 still must require that the GMA be followed. We must also look at the larger picture and see
15 that the intent of RCW 36.70A.020(2) (the GMA's sprawl reduction goal) be followed while
16 allowing for Limited Areas of More Intense Rural Development.

17 **Conclusion:**

- 18 **1. Type I:** The three proposed type (d)(i) (Type I) LAMIRDs, **George 7,**
19 **Royal 1 and Ephrata 3,** fail to comply with the requirements of RCW
20 36.70A.070(5)(d)(i) and (iv) and RCW 36.70A.070(5)(c)(i) and (iii).
21 The County has failed to show their work for how the logical outer
22 boundaries (LOB) were determined. The Board needs sufficient
23 information to determine if the limiting of the boundaries was done
24 according to the respective provisions of the GMA. (RCW
25 36.70A.070(5)(d)(i) and (iv)).
- 26 **2. Type II:** The following type (d)(ii) (Type II) LAMIRDs fail to comply
with the requirements of RCW 36.70A.070(5)(d)(ii) and (iv) and RCW
36.70A.070(5)(c)(i) and (iii): **Ballard 1, Moses Lake 10, Silica
Road, Rocky Ford 1, Jet Farm 1 and Ephrata 2.**

The following Type (d)(ii) (Type II) LAMIRDs are found in compliance:
Dodson Road 1, Mae Valley 4 and George 2.

- 1
2
3
4
3. **Type III:** The following proposed type (d)(iii) (Type III) LAMIRDs fail to comply with the requirements of RCW 36.70A.070(5)(d)(iii) and (iv) and RCW 36.70A.070(5)(c)(i) and (iii): **Mae Valley 1, 2 and 3, Royal 2, Warden 1 and Wheeler 4.**

5
6

VI. FINDINGS OF FACT

- 7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
1. Grant County is a county located east of the crest of the Cascade Mountains that has chosen to or is required to plan pursuant to RCW 36.70A.040.
 2. Petitioner participated orally and/or in writing before the county on the matters being reviewed in this order.
 3. In response to the Board's findings of noncompliance in the Final Decision and Order issued May 12, 2000, and the Order on Reconsideration & Amendment of Order on Compliance, (June 2, 2004), the County specified the type of LAMIRD and submitted further arguments, but made no other changes to the Subject Ordinance.
 4. The County identified 3 of their LAMIRDs as Type I (RCW 36.70A.070(5)(d)(i)).
 5. The County identified 9 of their LAMIRDs as Type II (RCW 36.70A.070(5)(d)(ii)).
 6. The County identified 6 of their LAMIRDs as Type III (RCW 36.70A.070(5)(d)(iii)).
 7. The Legislature's use of the term "isolated" for both cottage industry and small-scale businesses in RCW 36.70A.070(5)(d)(iii) demonstrates an unambiguous intention to ensure that any commercial uses established by the mechanism of a type (d)(iii) LAMIRD be set apart from other such uses.
 8. A central requirement of all LAMIRDs is that they contain the uses and areas of more intense rural development. RCW36.70A.070(5)(d)(iv).
 9. Every county must assure that rural development is contained and that inappropriate conversion of undeveloped land into sprawling, low-

density development is reduced in the rural areas. RCW 36.70A.070(5)(c)(i) and (iii), and 36.70A.070(5)(d)(iv).

10. LAMIRDs must limit and contain growth, not extend it from one LAMIRD to the next.
11. The proposed new type (d)(iii) LAMIRD does not comply with RCW 36.70A.070(5)(d) because it connects a new area of more intense rural uses to an existing LAMIRD that allows the same kind of uses.

VII. CONCLUSIONS OF LAW

- A. This Board has jurisdiction over the parties and subject matter of this compliance proceeding.
- B. Petitioner has standing to challenge the County's actions to achieve compliance in this case.
- C. Counties seeking to establish logical outer boundaries for LAMIRDs are required to follow the criteria found in RCW 36.70A.070(5)(d) (i) and (iv) and show their work in the record before the Hearings Boards in such a way as allows a reviewing body to determine that the criteria has been met.
- D. The Growth Management Act requires Grant County to contain and minimize growth within LAMIRDs and conform with the rural character of the area. This is typically accomplished through implementing development regulations. Once LAMIRDs have been designated, the development that pertains to the newly designated LAMIRDs must also be consistent with the GMA requirements for minimizing and containing growth in LAMIRDs. (RCW 36.70A.070(5)(d) and (c)).

VIII. ORDER

The Petitioner has not carried his burden of proof and the Board finds the following LAMIRDs in compliance with the GMA: **Dodson Road 1, Mae Valley 4, and George 2.**

The Petitioner has carried his burden of proof and the Board finds that the actions taken by the County are clearly erroneous based upon the record before the Board and in light of the goals and requirements of the Growth Management Act and the following

LAMIRDs are found out of compliance: **George 7, Royal 1, Ephrata 3, Ballard 1, Moses Lake 10, Silica Road, Rocky Ford 1, Jet Farm 1, Ephrata 2, Mae Valley 1, 2, and 3, Royal 2, Warden 1, and Wheeler 4.**

The County shall achieve compliance with respect to the proposed LAMIRDs within 90 days of the date of this order, **January 27, 2005**. The County shall submit a report to the Board within ten days thereafter, **February 7, 2005**, and serve copies on Petitioner on the same date. Any objections to a finding of compliance must be in writing and filed with the Board within two weeks of the filing of the County's report, **February 22, 2005**. The County's response to any such objections shall be due two weeks thereafter, **March 8, 2005**. The Board will set a compliance hearing date upon receipt of the requested materials.

Pursuant to RCW 36.70A.300(5), this is a final order for purposes of appeal. Pursuant to WAC 242-02-832, a Motion for Reconsideration may be filed within ten days from the date of service of this Order.

SO ORDERED this 1st day of November 2004.

EASTERN WASHINGTON GROWTH MANAGEMENT
HEARINGS BOARD

Dennis Dellwo, Board Member

Judy Wall, Board Member